

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

M.A.C.M.A. No. 1030 of 2009

Between:

United India Insurance Company Limited rep. by
The Branch Manager

....

Appellant

And

1. P.Ramulamma and
others

....

Respondents

DATE OF JUDGMENT PRONOUNCED: **27.07.2015**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

1. Whether Reporters of Local Newspapers
may be allowed to see the judgments? Yes /
No
2. Whether the copies of judgment may be
marked to Law Reporters / Journals? Yes / No
3. Whether Their Lordship wish to
see the fair copy of the Judgment?
Yes / No

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD

RAO

M.A.C.M.A.No.1030 of 2009

JUDGMENT:

Aggrieved by the Award dated 09.01.2009 in M.V.O.P.No.96 of 2006 passed by the Chairman, MACT-cum-I Additional Chief Judge, City Civil Court, Secunderabad (for short “the Tribunal”), the 2nd respondent in the O.P/United India Insurance Company Limited preferred the instant appeal.

2) The factual matrix of the case is thus:

a) The case of the claimants is that on 14.01.2006 night when the deceased—P.Dibba Reddy after coming from Adilabad to Hyderabad City and travelling in APSRTC hired bus bearing No.AP 28 V 3547 to go to Miyapur and when it reached near Royal Garden turning at 5 AM on 15.04.2006, the deceased proceeded towards the rear side door of the bus in order to get down and the driver drove the bus in a rash and negligent manner and at high speed and took turn at Miyapur Cross Roads thereby, the deceased who was standing on the footboard, fell down on the road and sustained severe bleeding injuries apart from head injury and died on the spot. It is averred that the accident was occurred due to the

fault of the driver of RTC bus. On these pleas, the claimants filed M.V.O.P.No.96 of 2006 under Section 166 of Motor Vehicles Act (for short "MV Act") and claimed Rs.20,00,000/- as compensation against respondents 1 to 3, who are the owner, insurer and APSRTC.

b) Respondents 1 and 3 remained ex-parte.

c) Respondent No.2/Insurance Company filed counter and opposed the claim denying all the material averments made in the petition and urged to put the claimants in strict proof of the same. R2 disowned its liability on the ground that accident was occurred due to the fault of the deceased himself and owner of the bus (R1) hired the same to APSRTC (R3) without its knowledge and therefore, R1 and R3 are liable to pay compensation. Finally, R2 contended that compensation claimed was highly excessive and exorbitant and thus prayed to dismiss the O.P.

d) During trial, PWs.1 to 4 were examined and Exs.A1 to A8 were marked on behalf of claimants. RW1 was examined and Exs.B1 to B4 were marked on behalf of 2nd respondent.

e) The Tribunal considering the oral and documentary evidence held that driver of the offending RTC bus was responsible for the accident. Compensation is concerned, the Tribunal awarded Rs.8,52,997/- with proportionate costs and interest at 7.5% p.a under different heads as follows:

Loss of dependency

Rs. 8,19,997-00

Loss of estate	Rs. 15,000-00
Loss of consortium	Rs. 15,000-00
Transport charges	Rs. 1,000-00
Funeral expenses	Rs. 2,000-00

Total:	Rs. 8,52,997-00

Hence, the appeal by United India Insurance Company Limited.

3) The parties in this appeal are referred as they stood before the Tribunal.

4) Heard arguments of Sri V.Sambasiva Rao, learned counsel for appellant/Insurance Company. Sri Akkam Eshwar, learned counsel for respondents 1 to 6/claimants. Notice sent to R7 and R8 was served but no representation hence, treated as heard.

5 a) Learned counsel for appellant/Insurance Company disowned its liability on the main plank of argument that accident was occurred purely due to the fault of the deceased himself as the deceased in order to get down from the bus came to the rear side of the bus holding his bag and baggage in two hands and lost control and fell down from the moving bus and in the process, absolutely there was no fault of bus driver as he concentrated in driving and looking forward. Learned counsel argued that merely because a person fell down from a bus, that too from the rear side, there cannot be any automatic presumption that the bus driver was responsible for the accident. On this proposition he relied upon

the decision reported in ***Mohammed Aynuddin @Miyam v. State of A.P.***^[1]. He argued that in given circumstances the Court has to see whether the driver was in fact responsible for the accident. For instance, when the Conductor was engaged in alighting and boarding passengers and even without his giving signal, the driver if moved the bus then he might be responsible for the accident. That is not the case here. In the instant case, the deceased went to the rear side of the bus holding his bag and baggage in his two hands and stepped on the footboard and accidentally fell down, for which he has to blame himself and driver can not be held responsible for that purpose.

b) Secondly, he argued that quantum of compensation awarded by the Tribunal is on high side as the Tribunal applied high multiplier and further, rate of interest awarded was also excessive one. As such compensation has to be re-assessed.

On these pleas, primarily learned counsel sought for to exonerate the Insurance Company from liability and alternatively for re-assessment of compensation.

6 a) Per contra, opposing the appeal, learned counsel for respondents/claimants firstly argued that the contention of the appellant that deceased was responsible for the accident is preposterous in view of the overwhelming oral and documentary evidence placed by the claimants showing that while negotiating turn the driver drove the bus at high speed

and in a rash and negligent manner and thereby wheel of the bus fell into the road side ditch and deceased fell down from the footboard. He thus argued that the Tribunal considering this evidence has rightly fixed the liability on the bus driver and the Insurance Company has not placed any contra evidence to prove that there was no fault of the bus driver. As such it cannot now argue contra.

b) Secondly, contending that compensation awarded need not be reduced, he submitted that in fact meagre compensation was awarded by the Tribunal as it took a low multiplier of 6.31 but the correct multiplier for the persons in the age group of 51 to 55 as per the decision of the Apex Court reported in ***Smt.Sarla Varma v. Delhi Transport Corporation***^[2] is '11'.

c) Further, the Tribunal awarded a pittance of Rs.2,000/- towards funeral expenses and Rs.15,000/- for loss of consortium and since the compensation was already decreased due to the above errors, it may not be reduced further. He thus prayed to dismiss the appeal.

7) In the light of rival arguments, the point for determination is:

"Whether the award passed by the Tribunal is factually and legally sustainable?"

8) **POINT**: Accident, involvement of bus bearing No. AP 28 V 3547 and death of deceased are not in dispute. The first contention of Insurance Company to absolve from liability is,

the deceased himself was responsible for the accident as he travelled on the footboard holding two bags in his both hands and thereby fell down from the bus and for that matter, driver cannot be attributed with fault. It is also contended that merely because a person while boarding or alighting from the bus fell down and met with an accident, the bus driver cannot be automatically held responsible without considering the associated facts. There is no demur about the legal point raised by learned counsel for appellant/Insurance Company. Merely because a passenger got involved in the accident while boarding or alighting from the bus, the driver cannot per se be held liable for the accident. The above point was reiterated by the Apex Court in **Mohammed Aynuddin's** case (1 supra) cited by the appellant. It observed thus:

"4. xxx A passenger might fall down from a moving vehicle due to one of the following causes: It could be accidental; it could be due to the negligence of the passenger himself; it could be due to the negligent taking off of the bus by the driver. However, to fasten the liability with the driver for negligent driving in such a situation there should be the evidence that he moved the bus suddenly before the passenger could get into the vehicle or that the driver moved the vehicle even before getting any signal from the rear side.

5. A driver who moves the bus forward can be expected to keep his eyes ahead and possibly on the sides also. A driver can take the reverse motion when that driver assures himself that the vehicle can safely be taken backward.

6. It is a wrong proposition that for any motor accident negligence of the driver should be presumed. An accident of such a nature as would prima facie show that it cannot be accounted to anything other than the negligence of the driver of the vehicle may create a presumption and in such a case the driver has to explain how the accident happened without negligence on his part. Merely because a passenger fell down

from the bus while boarding the bus no presumption of negligence can be drawn against the driver of the bus.”

So from the above principle, one can agree with the appellant to the extent that there cannot be any automatic presumption that the bus driver was responsible just because a passenger fell down from the bus. To fix liability on the driver, there must be plausible evidence. It is thus to be seen whether in the instant case there is such evidence.

9a) PW3 is said to be a co-passenger of the deceased and eyewitness to the accident. His evidence is to the effect that he was travelling in the offending bus and when it reached Miyapur bus stop near Royal Garden Dhaba, the deceased on the instructions of the Conductor, went towards door of the bus to get down and at that time the driver drove the bus in a rash and negligent manner and at high speed and taken a turn at Miyapur Cross Road and the bus fell in a ditch and in that process, the deceased who was standing in the bus lost his control and fell down on the road and sustained injuries on the head and other parts and died on the spot. He denied the suggestion that accident was occurred due to the fault of the deceased himself. PW3 is shown as eyewitness and referred as LW5 in Ex.A2—charge sheet. In fact, his 161 Cr.P.C. statement covered by Ex.B4 part-II case diary was filed through RW1 by the appellant Insurance/Company. Thus, there is no demur that PW3 was an eyewitness to the accident.

b) His evidence clearly shows that on the instructions of the Conductor only the deceased got up from his seat and went towards the exit door with his bag and baggage to get down at Miyapur bus stop. The evidence of PW3 would further show that though the driver might not be knowing that deceased approached the footboard area to get down the bus since he was looking forward, still it can be expected that he knows that Miyapur bus stop was approaching and he should stop the bus for alighting passengers. However, the evidence of PW3 would show that even when the bus stop was reaching nearby, the driver drove the bus at high speed and in a rash and negligent manner that too while negotiating a curve and thereby could not avoid the road side ditch and the rear wheel of the bus fell in the ditch and due to jerk the deceased thrown off the bus and died. PW3 is concerned, a third party and there was no need for him to depose falsehood. His evidence would clearly show that the deceased did not travel on the footboard all through, but he went towards footboard only on the instructions of the Conductor since Miyapur bus stop was approaching. So, he cannot be attributed with any fault. On the other hand, the driver without slowing down the bus drove it at high speed and seemingly could not control the bus to avoid the ditch. Hence, there is plausible evidence in the form of PW3 to fix responsibility on the bus driver. In addition to PW3, Ex.A2—charge sheet also shows that the police too after investigation concluded that the bus driver was responsible for the accident. Against this oral and

documentary evidence, the Insurance Company or the other respondents did not place any evidence to contradict the evidence of the claimants. RW1 was not an eyewitness to the accident. Mere filing of Ex.B4—161 Cr.P.C. statements will not lead anywhere. When PWs.2 and 3 were in dock, the learned counsel for Insurance Company did not contradict their previous statements and made them to admit the contents in those documents to gain advantage. So, Ex.B4 cannot be given preference to the evidence of witnesses in the Court. Hence, the Tribunal was certainly right in holding that the bus driver was responsible for accident. Accordingly, this contention of the appellant is rejected.

10) The next contention is with regard to quantum of compensation. The oral evidence of PW4 coupled with Ex.A8—Service Register, Ex.A7—Salary Certificate would show that deceased was born on 01.07.1953 and he was a post-graduate in MA and was working as Head Master at Thiryani High School under ITDA in Adilabad District. The Tribunal arrived at loss of dependency at Rs.8,19,997/- taking net salary of Rs.16,224/- per month and by fixing a multiplier of 6.31 basing on his age. The Tribunal deducted 1/3rd of his net earnings towards his personal expenses. In my view, the Tribunal has not committed any fault in accepting the multiplier as 6.31. Having regard to the fact that deceased was aged 52 years and left with 6 years of service by the time of his death, fixation of multiplier at 6.31 cannot be carped. So at the out

set, the compensation for loss of dependency cannot be said to be an excessive one. At the same time, it can not be said to be a meagre one as contended by the respondents/claimants. Though the compensation awarded under heads—loss of consortium and funeral expenses appears to be slightly low, the same cannot be enhanced since the claimants have not preferred any independent appeal. The award passed by the Tribunal is factually and legally sustainable as there are no merits in the contention of the appellant.

11) In the result, this MACMA is dismissed by confirming the award passed by the Tribunal in MVOP No.96 of 2006.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 27.07.2015

Note: L.R. copy to be marked: Yes/No

Murthy

[\[1\]](#) II (2000) ACC 360 (SC) = (2000) 7 SCC 72

[\[2\]](#) 2009 ACJ 1298 (SC)